ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೯ **Volume 149**	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಡಿಸೆಂಬರ್ ೪, ೨೦೧೪ (ಮಾರ್ಗಶಿರ ೧೩, ಶಕ ವರ್ಷ ೧೯೩೬) **Bengaluru, Thursday, December 4, 2014 (Margashira 13, Shaka Varsha 1936)**	ಸಂಚಿಕೆ ೪೮ **Issue 48**

ಭಾಗ ೪

ಕೇಂದ್ರದ ವಿಧೇಯಕಗಳು ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ಕೇಂದ್ರದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರ ಸರ್ಕಾರದವರು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ಶಾಸನಬದ್ಧ ಆದೇಶಗಳು ಮತ್ತು ರಾಷ್ಟ್ರಪತಿಯವರಿಂದ ರಚಿತವಾಗಿ ರಾಜ್ಯ ಸರ್ಕಾರದವರಿಂದ ಪುನಃ ಪ್ರಕಟವಾದ ಆದೇಶಗಳು

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

NOTIFICATION

Dated 27th August, 2014, 5 Bhadrapada, 1936 (Saka)

No. 82/KT-LA/(3/2013)/2013- In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Order of the High Court of Karnataka dated 16th April, 2014 in Election Petition No. 3 of 2013.

BY ORDER
TAPAS KUMAR
Principal Secretary
Election Commission of India.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16th DAY OF APRIL, 2014

BEFORE

THE HON'BLE MR. JUSTICE B.S. PATIL

E.P.No.3/2013

BETWEEN:

M.C.Sundareshan,
S/o late Sri Channaiah, Aged 59 years,
R/o No.630/K, Aniketana Road,
6th Cross, Kuvempunagar,
Mysore - 570 023.

.... PETITIONER

(By Sri V. Javahara Babu, Adv.)

AND:

1. Dr. H.C. Mahadevappa,
S/o late Chikkamadaiah,
Resident .No.233, Hadinaru village,
Chikkaiahnachatra Hobli, Nanjangudu Taluk,
Mysore District.

2. Sri C.Ramesh,
S/o Chikkasiddaiah, Aged about 64 years,
Resident of No.970, Gopalapura,
T.Narasipura town, Mysore District.

3. Sri B.M.Doddamadaiah,
S/o late Madaiah,
Aged about 61 years,
Resident of Benakanahalli village,
Sosale Hobli,
T.Narasipura Taluk, Mysore District.

4. Sri Puttabasavaiah,
S/o late Doddabasavaiah, Aged about 65 years,
Resident of Nilasoge Grama and Post,
Muguru Hobli, T.Narasipura Taluk,
Mysore District.

5. Sri M.Mahadevu,
S/o late Mondaiah, Aged about 63 years,
Resident of M .C.Hundi, Kilanapura Post,
Varuna Hobli, Mysore Taluk.

6. Sri Srinivasa,
S/o Doddaiah, Aged about 39 years,
Resident of Kanakanagara, (Kathvadipura)
Nanjanagudu Taluk, Mysore District.

7. Sri Siddaiah,
S/o late Marisiddaiah,
Aged about 59 years,
Resident of Yadodore village,
Gargeswari Post, Kasaba Hobli,
T.Narasipura Taluk,
Mysore District.

8. Sri M.Kumar Kranti,
S/o Vadgalaiah, Aged about 31 years,
Resident of Madigahalli village,
Bannur Hobli,
T.Narasipura Taluk,
Mysore District.

9. Sri Talakadu G.Kemparaju,
S/o Guddaiah,
Aged about 60 years,
Resident of Arundhathi Nagar,
Hosabheedi, Talakadu,
T.Narasipura Taluk. ,

10. Sri Ningaiah,
S/o late Nagaiaha,
Aged about 45 years,
Resident of B.Sihalli village
and Post, Bannur Hobli,
T.Narasipura Taluk.

11. Sri Madappa,
S/o late Karagaiah,
Aged about 60 years,
Resident of No. 496,
Subhasnagar,
Bannur Town,
T. Narasipura Taluk,
Mysore District.

12. Sri B.C.Shantharaju,
S/o late Chikkamallaiah,
Aged about 38 years,
Resident of T.Bettahalli
village and Post,
T.Narasipura Taluk,
Mysore District .

13. Sri B.M.Srikantavardhan,
S/o Mahadevaiah,
Aged about 38 years,
Resident of No.159,
T.Bettahalli, Talakadu Hobli,
T.Narasipura Taluk,
Mysore District.

14. Sri Surendra.B.P.,
S/o Parameshaiah,
Aged about 33 years,
Resident of Jaibhimanagar,
1st Stage, Bannur,
T.Narasipura Taluk,
Mysore District.

15. Sri Sampathkumar,
S/o Mallaiah,
Aged about 43 years,
Resident of No.119,
1st Stage, Nandini Badavane,
T.Narasipura Road,
Mysore District.

.... RESPONDENTS

(By **Sri D.N. Nanjunda Reddy, Senior Counsel for**
Sri H. D. Amaranathan & Sri B.M. Arun, Advs. for R-1;
Sri Siddartha H.M. Adv. for R-4;
Sri P.Narayanappa, Adv. for R-12)

This Election Petition is filed under Sections 81, 82, 83, 84, 100 (1)(d) (iii) & (iv) & 101 (A) of the Representation of the People Act, 1951 praying to declare that the election of respondent No.1 as void and etc.

This Election Petition having been heard and reserved for orders en 20.02.2014, coming on for 'Pronouncement of Order', this day, the Court made the following:

ORDER

1. In this election petition, petitioner has challenged the election of the 1st respondent to the Karnataka Legislative Assembly from T.Narasipura (SC) Constituency for which elections were held on 05.05.2013 as illegal and void. He has sought for re-count of votes secured by all the contesting candidates and for declaration that the petitioner has been duly elected.

2. Election to T.Narasipura (SC) Constituency to the Legislative Assembly of the State of Karnataka was held on 05.05.2013. Petitioner contested as a candidate from Janata Dal (Secular) Party (for short, JDS). The 1st respondent contested from Indian National Congress Party. Counting of votes took place on 08.05.2013. The 1st respondent was declared elected by a margin of 323 votes against the petitioner. This election petition is presented urging that the 1st respondent, his agents and party leaders in collusion with the Returning Officer and the Assistant Returning Officer committed fraud and indulged in various irregularities during the

counting process to help and favour the 1st respondent so as to ensure this success though the returned candidate did not secure the number of votes as indicated in his favour. As there were in all 16 candidates who contested the election including the petitioner, all the contestants have been made as party respondents to this petition.

3. It is the case of the petitioner that as per the declaration of results of the election, the 1st respondent secured 53,219 votes as against 52,896 votes secured by the petitioner as was evident from Form No.21C. The counting of votes took place on 08.05.2013 at J.S.C. College, Nanjangud Road, Mysore. The strong room where the Electronic Voting Machines were kept was not opened in the presence of the petitioner or the counting agents of the petitioner, though the counting agents and the election agents were present in the counting centre. This was objected to by the counting agents. The Returning Officer and the Assistant Returning Officer ignored the objections.

4. It is further urged that about 6 EVMs did not bear the number. No counting agent was permitted in respect of the postal ballot counting table from the petitioner's side. On the other hand, the counting agent of the 1st respondent seemed to have participated in the counting of postal ballots which took place secretly.

5. It is also urged that the Returning Officer was receiving frequent calls on his mobile phone from the 1st respondent and his leaders. No arrangement had been made to display the number of votes secured by the candidates on the screen on completion of counting of votes at each round. The counting agents of the petitioner made a request for re-counting of votes.

6. There was disarray in the counting process in Round Nos.10 & 11 which forced the petitioner to make a written request for re-count of votes of Round Nos.10 & 11 and all other votes. The Returning Officer re-counted only votes in respect of Round Nos.10 & 11 and did not re-count the entire votes. All of a sudden, he declared the 1st respondent as duly elected without. passing any order on the application for re-count submitted by the petitioner.

7. He has further urged that in most of the results of the counting sheets, signatures of the counting agents of the petitioner were not obtained either by the Returning Officer or by the Assistant Returning Officer with a purpose of favouring the returned candidate. As regards postal ballots, petitioner has urged that procedure for receiving postal ballots was not followed as the ballot papers were received by hand and the signatures of the counting agents of the petitioner were not obtained at the time when the counting of postal ballot was effected. Several corrections without any authentication were made in Form No.17C relating to postal ballot which is glaringly evident in the number of votes recorded as against the name of the 1st respondent. True copy of Form No.17C is produced as Annexure No.24 and is relied upon in this regard. It is contended that neither the petitioner nor his counting agents were made known of the votes entered in Form No.20. Only through electronic media channels, petitioner learnt about the declaration that the 1st respondent was declared elected.

8. It is also urged that the entries in Form No.17C - Part-I showed that the number of votes cast (recorded in the EVM) were more than the number of electors assigned to the said polling station, which disclosed the illegality committed in the polling that has materially affected the results of the election. He has also urged that EVMs consisted of two units, i.e., ballot unit and control unit. The two units were interconnected. The control unit of the EVM had to be opened only on the day of counting to ascertain the number of votes cast in favour of each of the candidate. Therefore, it was of great importance to ensure that the control units used on the day of polling were kept in safe custody and were opened only on the counting date. identification numbers have been given to each control unit to avoid any foul play. According to the petitioner, a perusal of counting reflected in Form No.17C - Part-II disclosed that the identification numbers of the control units used on the polling day did not match with the identification number of the control unit opened on the counting date which clearly established that EVMs used on the polling date and the EVMs used on the date of counting were different, atleast in respect of 6 machines, which according to the petitioner, established the allegation of tampering.

9. It is further urged that even in the course of counting several irregularities have been committed by the Returning Officer and his staff. As, for instance, Form No.17 -C - Part-II was not signed by even the Supervisors and the Assistant Returning Officer, let alone the counting agents of the candidates.

10. The 1st respondent has filed objections to the election petition. He has contended that the election petition is filed seeking only re-counting of votes and no allegations of any corrupt practice is made. As per Section 83 of the Representation of the People Act, 1951 (for short, 'the Act'), an election petition shall contain all material facts which the petitioner relies upon. Failure to plead a single material fact is fatal to the election petition. Petitioner has failed to comply with the mandate of Section 83 of the Act, in as much as, the pleadings in the election petition are vague, bald and are bereft of material facts and therefore, the petition deserved to be rejected at the threshold. He has urged that petitioner did not make any allegation regarding opening of the strong room without the presence of the agents 'of the petitioner by lodging any complaint before the Returning Officer nor at the time of seeking for re-count and this allegation is only an afterthought. The details of 6 EVMs which allegedly did. not bear the number have not been furnished including the particulars of the polling station numbers, place, etc. Therefore, these averments in paragraph 8 of the election petition were frivolous and vexatious and did not disclose any cause of action. No violation of any statutory requirement in this regard is either referred to or invoked by the petitioner apart from not showing how such violation materially affected the result of the election.

11. It is urged that petitioner had made a written request for re-counting of votes in Round Nos.10 & 11 and also to re-count all other votes. The Returning Officer ordered for re-count of votes of Round Nos.10 & 11. In fact, petitioner was leading till 10th round as was evident from Annexure-23. The two applications submitted for re-counting as per Annexures-17 & 19 contradicted each other. Therefore, the averments regarding re-count of all the votes, is an afterthought, bereft of material facts, vexatious and frivolous and hence, liable to be struck off.

12. Regarding postal ballots, the allegations are denied as afterthought. Petitioner has, in fact, secured more votes in the postal ballot vide Annexure-24. No violation of any rule or statute is pointed out. Therefore, these allegations were vexatious and bereft of material facts,

13. As regards the illegalities attributed to the Returning Officer, in not considering the re-count of all the votes and in not announcing or displaying the number of votes obtained by each of the candidates before declaration of results, the said allegations are denied as baseless and afterthought apart from being frivolous and vexatious.

14. As regards the action of the Returning Officer in not furnishing some of the documents, the averments are termed as one not disclosing any cause of action. Regarding the allegation that the number of votes cast are more than the number of electors assigned as evident from Form 17C Part-I, it is urged that these pleadings are unnecessary and the allegations are bald, which were not all mentioned in the application submitted for re-count.

15. Regarding the mismatch of the identification numbers of the control units used on the polling date with the identification numbers of the control units which were opened on the counting date, so far as 6 EVMs were concerned, it is urged that these allegations were bald and vague as they did not contain any details regarding polling station, number of electors, etc.

16. The allegations that no signatures of the counting supervisors and the counting agents for the contesting candidates were found as per norms in Form 17C Part-II which has allegedly rendered the process illegal and has materially affected the result of the election, they are termed as bald and vague apart from being afterthought and not found in the applications for re-count.

17. In the two applications filed by the 1st respondent in IAs- 1/2014 & 2/2014, similar stand is taken in the affidavits filed in support of the prayer made in the applications.

18. In the objections filed by the petitioner to these two applications, he has denied the factual assertions made and has contended that the applications lacked *bona fides* and were intended only to protract the proceedings. He has urged that the pleadings in the election petition are supported by ample documents to establish the illegalities committed during the counting of votes, thereby materially affecting the result of the election. He has also urged that the contents of paragraphs 8 to 16 of the election petition disclosed material facts and cause of action in clear terms, therefore, question of rejecting the election petition holding that no cause of action was disclosed did not arise. He has urged that petitioner has made out *prima facie* case for re-counting.

19. Mr. Nanjunda Reddy, learned Senior Counsel appearing for the applicant- 1st respondent takes me through the provisions contained in Sections 81, 83, 86(1), 87 & 100 of the Act and also various decisions of the Apex Court, wherein it is laid down that pleadings in the election petition could be struck off and the election petition could be rejected at the threshold. He has placed reliance on the judgment in the case of **AZHAR HUSSAIN VS RAJIV GANDHI - 1986 (Supp) SCC 315,** to urge that non-compliance of the provisions of Section 83 of the Act regarding disclosure of material facts in the election petition as regards the alleged corrupt practices, entails rejection of' the election petition. Particular attention of the Court is drawn to paragraphs 8 to 12. In support of the contention that pleadings can be struck off if they are unnecessary, vexatious and frivolous and thereafter, the election petition can be rejected if no reasonable cause of action is made out after striking out the pleadings, he has relied on the judgment in the case of **DHARTIPAKAR MADAN LAL AGARWAL VS RAJIV GANDHI - 1987 (Supp) SCC 93,** particularly on paragraph 8. He has also placed reliance on the judgment of the Apex Court in the case of **SAMAR SINGH VS KEDAR NATH @ K.N.SINGH & OTHERS - 1987 (Supp) SCC 663,** particularly, the observation in paragraphs 4 to 7 to urge that interest of public is involved in an election dispute and the election petitioner has to plead facts regarding the allegations and that bare allegations are not material facts. Reliance is also placed on the judgments in the case of **RAM SUKH VS DINESH AGGARWAL - (2009) 10 SCC 541** (paragraphs 6, 10 & 13), and **JITU PATNAIK VS SANATAN MOHAKUD & OTHERS - (2012) 4 SCC 194,** in this connection.

20. Mr. Nanjunda Reddy takes me through the various allegations made in the election petition and urges that they are all bereft and devoid of any material facts and were afterthought. He urges that how there is infraction of any rule or statutory provision has not been stated. He has urged that the grounds available under Rule 63(1) of the Conduct of Election Rules, 1961, for seeking re-count have not been stated and no infraction of any rule is pointed out. Even as regards postal ballots, it is urged that, the allegations as contended by the petitioner were totally devoid of material facts. He has urged that even if all the votes shown against the Returned Candidate in the postal ballots are counted for the petitioner, it will not materially affect the result of the election. It is also urged that mere fact of non-mentioning of identification numbers on the control unites cannot mean that the machines were tampered, unless it was pleaded as to how they were tampered giving material facts.

21. Mr. Reddy has further placed reliance on the judgment of the Apex Court in the case of **SHRI JITENDRA BAHADUR SINGH VS SHRI KIRSHNA BEHARI & OTHERS - 1969(2) SCC 433**, particularly on the observations in paragraphs 7 to 10 with regard to the requirements of pleading in an election petition. Reliance is also placed on the judgment in the case of **D.P.SHARMA VS COMMISSIONER & RETURNING OFFICER AND OTHERS - 1984 (Supp) SCC 157,** particularly paragraphs 3 to 5, to urge that prejudice caused to the petitioner has to be established. He has also relied on the judgments in the case of **SANTOSH YADAV VS NARENDER SINGH - (2002) 1 SCC 160, and G.SHANKAREGOWDA VS RATAHAN SINGH - ILR 1992 KAR 2565,** to support his contentions.

22. Mr. Javahar Babu, learned Counsel appearing for the election petitioner, has urged that absence of numbers mentioned on the control unit and its effect can be examined only after the evidence is recorded. He has urged that these applications are filed after the issues were settled and documentary evidence was placed. Learned Counsel contends that all material facts and particulars are supplied by way of pleadings and documents and therefore, at this stage, rejection of the election petition does not arise. He has placed strong reliance on the judgment of the Apex Court in the case of **PONNALA LAKSHMAIAH VS KOMMURI PRATAP REDDY & ORS. - AIR 2012 SC 2638,** inviting particular attention of the Court to paragraphs 9 & 12. Mr. Javahar Babu has emphasized more on the importance of ensuring that the control units used on the day of polling were kept in safe custody and the same being required to be opened on the counting date to rule out any foul play. Each control unit is given unique identification number to enable a person to verify whether the control unit used on the day of polling and counting was one and the same, but as per Form 17C Part-I, in some of the EVMs there were no numbers. This omission, he contends, disclosed that the machines used on the polling day and the machines used on the date of counting were different, atleast in respect of 6 EVMs which showed that there was tampering,

23. Having regard to the respective contentions urged, the question that falls for consideration is,

"whether the 1st respondent has made out grounds for allowing the applications for striking out the pleading and for rejection of the election petition?"

24. It is indisputable that pleadings which are frivolous, vexatious, unnecessary and scandalous can be struck off and thereafter, if the petition averments in the election petition fail to make out a reasonable cause of action, then the election petition can be rejected at the threshold. In the case of **DHARTIPAKAR MADAN LAL AGARWAL, VS RAJIV GANDHI - 1987 (Supp) SCC 93,** dealing with power and jurisdiction to strike out pleadings under Order VI Rule 17 and to reject the petition under Order 7 Rule 11, the Apex Court in paragraph 8 has held referring to the provisions contained under Sections 81, 83, 86, & 87 of the Act, as under:

> "8. ... On a combined reading of Sections 81, 83, 86 and 87- of the Act it is apparent that those paragraphs of a petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the. proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the Court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial could prejudice, embarrass and delay the proceedings, the Court need not wait for the filing of the written statement, instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the Court finds that no triable issues remain to be considered. it has power to reject the election. petition under Order VII Rule 11."

25. In the case of **RAM SUKH: vs DINESH AGGARWAL - (2009) 10 SCC 541,** the Apex Court has dealt with the requirement of stating material facts in the election petition and the consequences of lack of such disclosure with reference to Sections 81, 83, 86 of the Act, wherein reference is made to the judgment in the case of **SAMANT N.BALKRISHNA VS GEORGE FERNANDEZ - 1969) 3 SCC 238, and VIRENDER NATH GAUTAM VS SATPAL SINGH - (2007) 3 SCC 617.** In paragraphs 22 & 23 of the said judgment referring to the allegations made of the irregularities attributed to the Returning Officer contending that the Returning Officer failed to circulate the attested signatures of the election agent of the Election Petitioner to various polling stations thereby failing to comply with Para 12 of Chapter VII of the Hand Book for the Returning Officers due to which the polling agent of the petitioner was not permitted to function till 3 p.m., by which time more than 80% polling was over, hence the inaction on the part of Returning Officer had materially affected the election, the Apex Court held that said facts fell short of being material facts as contemplated in Section 83(1)(a) of the Act to constitute a complete cause of action in relation to the allegation under Section 100(1)(d)(iv) of the Act, particularly because it was not the case pleaded by the Election Petitioner that in the absence of election agent there was some malpractice at the polling stations during the polling.

26. Even the judgment in the case of **JITU PATNAIK VS SANATAN MOHAKUD & OTHERS - (2012) 4 SCC 194,** deals with the contents of the election petition which shall contain concise statement of material facts. In the said case, the pleading of material facts with regard to suppression of 319 votes was regarded as incomplete as it had not been disclosed who suppressed 319 votes; who was the counting agent present on behalf of the election petitioner at the time of counting; how 319 votes were suppressed and why re-counting was not demanded. Moreover, there was no express pleading as to how the result of the election had been materially affected by less counting of 319 votes. It is in this background, the Apex Court found that in the absence of the election petitioner setting out all the material facts, and failing to provide adequate basis for the allegations made therein, the bald allegations did not constitute cause of action for declaring election of the' returned Candidate to be void.

27. In the case of **AZHAR HUSSAIN VS RAJIV GANDHI - 1986 (Supp) SCC 315,** the Apex. Court has observed in paragraph 12 that whole purpose of conferment of such power of dismissal of election petition in limine is to ensure that the litigation

which is meaningless and is bound to prove abortive should not be permitted to occupy the time of the Court and engage the mind of the respondent, The sword of Damocles need not be kept hanging over his head unnecessarily, without point or purpose. The Apex Court has further gone on to state that even in ordinary civil litigation, the Court readily exercises the power to reject the plaint if it does not disclose any cause of action. Therefore, there was greater reason for taking the same view in regard to matters pertaining to elections, in as much as, so long as the sword of Damocles of the election petition remains hanging, an elected member of the legislative assembly would not feel sufficiently free to devote his wholehearted attention to matters of public importance, as he would be required to divert his attention to contest the election petition. He will have not only to win the vote of the people, but also to win the vote of the Court in a long drawn out litigation before he can wholeheartedly engage himself in discharging the trust reposed in him by the electorate'.

28. The other judgments relied on by the 1st respondent in support of the prayer made in the applications also deal with the same aspect of the matter. Therefore, it is unnecessary to refer to each one of them.

29. In the light of the law enunciated by the Apex Court, it has to be now seen whether the election petition contains averments that deserve to be struck off as being vexatious, frivolous, unnecessary and as to whether the allegations made are devoid of material facts failing to make out a reasonable cause of action to maintain the election petition entailing its rejection at the threshold.

30. Up to paragraph 7, petitioner has narrated only the events regarding the date of election, the particulars of the contestants and such other formal enumerations including reference to some documents to evidence such incidents. Allegations which form basis for the cause of action, according to the petitioners, are contained in paragraph 8 onwards. Paragraph 8 relates to the alleged lapse on the part of the Returning Officer in not ensuring that the strong room where EVMs were kept was opened either in the presence of the petitioner or in the presence of the counting agent/election agent of the petitioner and the action of the Returning Officer in proceeding with the counting though 6 EVMs did not bear the numbers, that too without permitting any counting agent in respect of postal ballot counting table from the petitioner's side, which established violation and bias. It is also alleged therein that the Returning Officer was receiving frequent calls on his mobile from the 1st respondent and his leaders.

31. On careful perusal of these averments in paragraph 8 of the petition, it is clear that petitioner has not stated that any grievance was made in writing before the Returning Officer after the strong room was opened. The details as to which were the 6 EVMs that did not bear the numbers and what were the polling station numbers and the particulars of the place where those 6 EVMs were used are not mentioned in the election petition. Therefore, these allegations pertaining to the 6 EVMs bearing no numbers are bereft of any material facts. They cannot be made basis for the cause of action. There is nothing pleaded in the petition how the opening of the strong room in the absence of the petitioner or his agent has violated any statutory provisions and how such violation has materially affected the result of the election. How many votes were counted in the 6 EVMs, out of which, how many votes petitioner secured and how many votes the returned Candidate secured are also not pleaded. There is nothing to show, how and when and by whom the absence of numbers on these 6 EVMs was noticed.

32. Similarly, what was the conversation in which the Returning Officer was engaged with the 1st respondent and his leaders and how it has affected the result of the election and whether he complained about the same to anybody are not forthcoming. Therefore, there is no basis for these allegations and it is not shown how it has affected the process of counting or the result of declaration of election. Further, the allegation that no counting agent was permitted in respect of postal ballot counting table from the petitioner's side is a bare allegation, not based on material facts. There is nothing to show that any complaint was made in this regard by any of the polling agents or for, that matter, by the petitioner himself.

33. As regards the allegations made in paragraph 9 pertaining to absence of arrangement for display of round-wise results and the alleged disarray in the process of counting in Round Nos.10 & 11 and the request made for re-counting, it is necessary to notice that Annexures-17 & 19 pertaining to the request for re-count do not make any reference to non-display of votes on completion of counting of votes at each round or of any disarray or chaos in the counting. The allegation made in this regard attributing disarray in the process of counting and lack of display of round-wise votes at each round are devoid of any material facts. They are also totally unnecessary. Hence, liable to be struck off.

34. The grievance made as is apparent from Annexures-17 & 18 is with regard to re-counting of votes. Though petitioner seeks for re-count of votes in all the polling booths by making a request as per application produced at Annexure-17, as per another application produced at Annexure-19, re-counting was sought in respect of 10th & 11th rounds stating that counting of polling station Nos.181 to 213 was not found to be satisfactory. It is thus evident that grievance of the petitioner was only in respect of the process of counting of votes polled in Polling Station Nos.181 to 213. This itself shows that the assertion made regarding the alleged disarray in the counting of votes, has no basis and does not have any material facts supporting the said allegation. It is necessary to state here that the Returning Officer acceded to the request made by the petitioner for re-counting of votes counted in Round Nos.10 & 11. It is further very relevant to' notice that indisputably petitioner was leading till 10th round as is evident from Annexure-23. It is because of this reason, petitioner chose to request as per Annexure- 19 to re-count the votes counted in Round Nos.10 & 11. Hence, the allegations made in paragraphs 9 & 10 regarding omission to re-count the entire votes and the alleged sudden declaration of the result of 1st respondent as duly elected is devoid of any material facts and is against his own request wherein he sought for re-counting of votes in Round Nos.10 & 11 only.

35. As regards the allegations in paragraph 11 regarding receipt and counting of postal ballots and the alleged corrections in Form 17C without any authentication, there are no material facts providing basis to these allegations. No complaint is lodged either at the time of counting or when an application for re-count was made. Indeed, petitioner has secured more votes in the postal ballot as per Annexure-24. Petitioner has not pointed violation of any rule in the procedure adopted for counting the postal ballots. The averments made, therefore, are devoid of material facts and they do not disclose any cause of action and are therefore, liable to be struck off.

36. The allegations made in paragraph 12 that neither the petitioner nor his counting agents were made known of the votes entered in Form-20 because there was no announcement or declaration of result and that petitioner learnt about the result only through electronic media, therefore the conduct of the Returning Officer and his staff had been vindictive throughout the process of election, again suffer from lack of any material facts. Admittedly, the Returning Officer has acceded to the request of the petitioner for re-count of votes polled in Round Nos.10 & 11. Though petitioner had made one request to re-count all votes in all the polling booths, another request made by him shows that he was particular about re-count of Round Nos.10 & 11. In such circumstance, when his request was granted and votes were re-counted as desired by the petitioner, the allegations directed against the returning officer are totally baseless and vexatious. At any rate, since the request of the petitioner for re-count of votes polled in Round Nos.10 & 11, in which, he had secured less number of votes compared to the winning candidate has been granted, it is not shown how such allegations made against. the Returning Officer have prejudicially and materially affected the declaration of result and the prospects of the petitioner.

37. Allegations made In. paragraph 13 regarding non furnishing of certain documents by the Returning Officer do not disclose any cause of action for the relief sought in the election petition. They are frivolous. Similarly, the allegations made in paragraph 14 pertaining to the entries in Form17C - Part-I that the number of votes recorded in the EVMs were more than the number of electors assigned to the polling station, are bald and vague. No details of the polling stations nor the details regarding number of electors are furnished. No infraction of any rule or procedure is pleaded. Therefore, these averments are bereft of material facts and are vexatious. If that was so, nothing prevented the petitioner from pleading as to in which polling station such a discrepancy had cropped up and nothing prevented the petitioner from stating so in the representation submitted seeking re-counting.

38. Further, allegations made in paragraph 15 making a grievance regarding the result of counting mentioned in Form 17C Part-II stating that identification numbers of the control units used on the polling, day did not match the identification numbers of the control units which were opened on the counting day and in some forms, no numbers were mentioned in respect of six machines and therefore, there was tampering of the electronic voting machines is totally devoid of any material facts. The details regarding polling stations, the names of the polling agents who were in charge of the same and whether they made any complaint in this regard, the number of electors in respect of the said polling stations and the number of votes cast in the said polling stations in favour of the petitioner and also in favour of the returned candidate which are material facts forming basis for investigation of such allegations are not mentioned. Petitioner does not show violation of any rule or order under the Act in this connection. He has not pleaded how they have materially affected the election result. Therefore, these averments are frivolous, vexatious apart from devoid of material facts and are therefore liable to be struck off.

39. Allegations made in paragraph 16 that the Returning Officer and his staff committed irregularities, in as much as, the signatures of the supervisors, Assistant Returning Officers and counting agents of the petitioners were not taken on Form 17C Part-II are again devoid of any material facts and no ground is made out how the result has been materially affected as a result of such omissions. These averments are, therefore, frivolous and vexatious. Nothing is shown how the action of the Returning Officer violates the prescribed procedure or rule let alone taking up any plea in this regard in the pleading.

40. It is thus clear from the above that petitioner was leading in all the rounds except Round Nos.10 & 11. He sought for re-count of the votes in respect of Round Nos.10 & 11. The request was granted. Because of the difference of votes polled in Round Nos.10 & 11 compared to the 1st respondent, petitioner secured 323 votes less than the 1st respondent. It is not the case of the petitioner that the number of votes found in Form 17C Part-II differ from the number of votes mentioned in Form l7C Part-I which is prepared at the polling station. Therefore, bare allegations made stating that six control units did not bear the identification numbers, without mentioning all necessary material facts which afford basis for the grievance made by the petitioner and without stating how they affected the process of counting and the consequent result declared, cannot become a foundation for engaging the respondent in the litigation.

41. In **JITU PATNAIK VB SANATAIN MOHAKUD & OTHERS - (2012) 4 SCC 194,** the Apex Court has clearly laid down how bare allegations are never treated as material facts. The entire allegations made in the petition are directed against the process of counting of votes. None of the allegations are based on any material facts. Nothing is shown how the process of counting has contravened the provisions of the Act or the Rules or the procedure prescribed. Hence, none of the allegations made in the election petition make out a reasonable cause of action. The allegations made, as stated above, are devoid of material facts. The pleadings in paragraphs 9, 12 & 16 are liable to be struck off. The other pleadings do not contain any basis for the cause of action pleaded. Consequently, both the applications filed are required to be allowed.

42. For the aforesaid reasons, both the applications IA- 1/2014 and IA-2/2014 are allowed in terms stated above. The election petition is rejected at the threshold for not disclosing material facts and for not making out any reasonable cause of action for the grievance made.

Sd/-

JUDGE

BY ORDER

TAPAS KUMAR

Principal Secretary

Election Commission of India.

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Section Officer

High Court of Karnataka

Bangalore.

ಪಿ.ಟಿ. ಕುಲಕರ್ಣಿ

ಜಂಟಿ ಮುಖ್ಯ ಚುನಾವಣಾಧಿಕಾರಿ ಹಾಗೂ

ಪದನಿಮಿತ್ತ ಸರ್ಕಾರದ ಜಂಟಿ ಕಾರ್ಯದರ್ಶಿ,

ಸಿಬ್ಬಂದಿ ಮತ್ತು ಆಡಳಿತ ಸುಧಾರಣಾ ಇಲಾಖೆ.

(ಚುನಾವಣೆಗಳು)

P.R. 112

SC - 50

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

NOTIFICATION

Dated 27th August, 2014, 5 Bhadrapada, 1936 (Saka)

No. 82/KT-LA/(1/2013)/2013- In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby published the Order of the High Court of Karnataka dated 1st April, 2014 in Election Petition No. 3 of 2013.

BY ORDER

TAPAS KUMAR

Principal Secretary

Election Commission of India.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 1ST DAY OF APRIL, 2014

BEFORE

THE HON'BLE MR. JUSTICE B.S. PATIL

E.P.No.1/2013

BETWEEN:

Sri V.Nagaraj,
S/o Sri Varadappa,
Aged about 51 years,
R/a No.'U'-7, II Main Road:,
II Cross, Hanumanthapuram, Srirampuram,
Bangalore - 560 021. **. .. PETITIONER**

(By Sri H.N.Shashidhara, Adv.
for M/s. Kesvy & Co., Advs.)

AND:

Sri Dinesh Gundu Rao,
S/o late Gundu Rao,
Aged about 44 years,
R/at Na.159, MLA Layout, R. T . Nagara,
Bangalore - 32. **. .. RESPONDENT**

(By Sri K. Shashikiran Shetty, Adv.)

This Election Petition is filed under Section 81 of the Representation of the People Act, 1951, by the Petitioner along with his Counsel Sri K.R.Venkataramana, challenging the election of the respondent as Member of Legislative Assembly from No.164, Gandhinagar Legislative Assembly Constituency, General Election held in the year 2013, praying to (a) pass an order/direction to inspect/verify/investigate the genuineness of the EV machines and the software of the 232 EVMs used in the Gandhinagara Assembly Election, from the independent person or body, technically qualified person/s and re-count the votes, (b) declare that the election result announced by the Returning Officer on 08.05.2013 declaring the respondent is winner as null and void, etc.

This petition having been heard and reserved for orders on 06.02.2014, coming on for 'Pronouncement of Orders', this day, the Court made the following:

ORDER

1. Petitioner - V.Nagaraj has filed this election petition seeking a declaration that election result announced by the Returning Officer on 08.05.2013 declaring respondent Sri Dinesh Gundu Rao as duly elected to the Gandhinagar Assembly Constituency to the State Legislative Assembly is null and void.

2. In this petition, respondent has filed IA No.6/2013 under Order VI Rule 16 read with Section 151 CPC praying to strike off certain pleadings in the election petition as unnecessary, frivolous and vexatious. IA No.7/2013 under Order VII Rule 11(a) read with Section 151 CPC is filed praying for rejection of the election petition on the ground that it does not disclose any cause of action.

3. Question that falls for consideration is:

> "whether the respondent-applicant has made out any grounds for allowing these applications?"

4. Facts necessary for consideration of the applications briefly stated are as under:

5. Election to the Slate Legislative Assembly for 164- Gandhinagar Assembly Constituency was held. on 05.05.2013. Petitioner contested from BSR (Congress), whereas the respondent contested as candidate from Indian National Congress. One BJP candidate amongst others was also in the fray. Election result was declared and respondent-Dinesh Gundu Rao won with 54,968 valid votes polled, defeating his nearest rival Sri P.C.Mohan of Bharatiya Janata Party who secured 32,361 votes. Petitioner with 10,875 votes lost the elections.

6. In the present election petition, petitioner has alleged that he is a social worker and has rendered yeoman service to the residents of Gandhinagar. Respondent being son of former Chief Minister of Karnataka - late Gundu Rao having political influence had nexus with underworld goondas and criminals apart from having nexus with Government officials. He was involved in misappropriation of public money. Cases registered against respondent in this regard were pending before jurisdictional Magistrate Court, Bangalore.

7. It is alleged in paragraph 3 of the election petition that with a view to come to power, he committed mal practices of all sorts. He filed illegal and baseless complaint against petitioner before Srirampura Police Station and got him arrested under the Goonda Act but eventually the High Court of Karnataka, Bangalore, directed the police to remove his name from the rowdy list, Copy of the High Court order is produced at Annexure-B. The averments in paragraph 4 in so far as the alleged attempt made by the respondent to defame the petitioner is bereft of any material facts. In the rest of the paragraph; he has only stated that he contested from BRS Congress. Similarly in paragraph 5, he states about the symbol allotted to him, which has nothing to do with any allegations of corrupt practice, therefore they are unnecessary.

8. In paragraph 6 of the petition, petitioner has alleged that at the time of filing nomination, he had more than 15,000 followers. Realizing the same, the respondent decided to commit mal practices in the election and began distributing money in all the booth areas with the help of underworld goondas and rowdies. Though the police seized the money, they did not take further action.

9. It is alleged in paragraph 7 that Gandhinagar Assembly Constituency had 232 voting booths. On completion of voting, all booth agents complained about defective electronic voting machines and their complaint about the same to concerned persons in charge of the booth was of no avail. It is further alleged in paragraph 8, of the petition that, after the completion of voting, on the same day, respondent made a statement that he would win the election with a margin of 20,000 votes. Petitioner entertaining doubt and suspicion about the free and fair election made inquiries and discovered from reliable sources that the respondent in collusion with manufacturers of electronic voting machines, contractor, the Returning Officer and the maintenance people had installed new software in all the electronic voting machines to divert votes cast in favour of the petitioner to the respondent. He was shocked and surprised that he did not secure the votes as he expected, but all his followers, fans and well-wishers opined that the problem was with the voting machine. According to him, the number of votes cast in his favour in the electronic machines did not tally with the number of votes cast by his followers, well-wishers and friends. Therefore, petitioner entertained a serious doubt against the respondent that he had

somehow manipulated the AVM machines. In paragraph 9 or the petition, petitioner has alleged that after analyzing the malpractice in relation to electronic voting machines, he complained to the Chief Electoral Officer on 13.05.2013. In this background, he has approached this Court seeking to set aside the election of the 1st respondent.

10. Respondent has tiled written statement denying the allegations made against the petitioner. It is contended that as per Section 83(a) of the Representation of People Act, 1951 (for short, 'the Act') , the petition shall contain a concise statement of material facts but petitioner has failed to set forth particulars of any corrupt practice. The alleged illegalities committed along with the names of the persons against whom allegations of corrupt practices have been made have not been stated. He has further alleged that as the provisions of the Code of Civil Procedure are applicable including Order VI Rule 16, the Court is entitled to strike off any pleading which is unnecessary, frivolous, vexatious and scandalous and also dismiss the election petition by invoking Order VII Rule 11 CPC as the petition did not disclose any reasonable cause of action.

11. It is urged that petitioner lacked bona fides in presenting the election petition. He has made reckless allegations without verification of facts and that election petition had been filed too casually. It is also alleged that petitioner was not a serious candidate interested in representing the constituency or serve the people. There were no defects in the 232 electronic voting machines used in Gandhinagar Assembly Constituency and the elections have taken place. in a free and fair manner. Respondent has contended that similar allegations had been made by the petitioner against the respondent at the time when the respondent was elected as MLA from Gandhinagar Assembly Constituency during 2004 and 2009 and the said petitions were also dismissed. He has urged that same averments are repeated in the instant election petition. Thus, the respondent has sought for dismissal of the election petition.

12. In I.A.No.6/2013, respondent has contended that the election petition did not disclose any cause of action, and the contents of the petition are either unnecessary or vexatious and do not disclose necessary facts, let alone material facts.

13. It is urged by Mr. Shashikiran Shetty, learned Counsel for the applicant/respondent that as' per Section 83, petitioner has to set forth particulars of corrupt practice including the names of persons who committed such corrupt practice, the date, place, etc., of the corrupt practice and failure to set forth these essential facts will entail dismissal of election petition in limine. According to him, the averments made in paragraphs 3, 4, 5 & 6 lacked. material facts regarding the allegations. Pleadings contained therein are totally unnecessary and hence liable to be struck off. Similarly, allegations and averments made in paragraph 7 of the election petition urging that after completion of voting, all the polling agents complained about the defect in the electronic voting machines, without disclosing the names of the polling agents and without furnishing any other details regarding such complaints as to what was the nature of complaint made by them regarding the machines, were bald and vexatious and hence liable to be struck off. The allegations made in paragraph 8 are also attacked as bereft of any particulars. The grounds set out in the petition are also described as grounds not falling within the purview of Section 100(1)(d)(iii) of the Act. He has, therefore, sought for rejection of the election petition.

14. The applications are resisted by the petitioner by denying the averments and allegations made in the affidavits filed in support of the applications.

15. I have heard the learned Counsel for both parties. They have relied on number of judgments of the Apex Court on the point.

16. It is well established by a catena of judgments of the Apex Court that an election petition is liable to be summarily dismissed exercising powers under Order VI Rule 16 and Order VII Rule 11 in case the petitioner fails to furnish any of the material facts as mandated under Section 83 of the Act, which are essential for disclosing cause of action relating to the charge of corrupt practice. Useful reference can be made to the judgment in the case of **AZHAR HUSSAIN VS RAJIV GANDHI - 1986 (Supp) SCC 315,** in this regard. It is laid down in this judgment that as per Section 83 of the Act, which deals with contents of the election petition, an election petition (a) shall contain a concise statement of material facts on which the petitioner relies; (b) shall set forth full particulars of any corrupt practice that the petitioner alleges. including the names of parties alleged to have committed such corrupt practice and the date and place of commission of each of such practice; and (c) shall be signed by the petitioner and verified in the manner laid down in CPC. If the mandatory requirement enjoined by Section 83 of the Act to incorporate meterial facts in the election petition are not complied with, an election petition can be summarily dismissed.

17. The law as enunciated by the Apex Court in **Azhar Hussain's case,** wherein other judgments of the Apex Court have been referred, clearly shows that 'whole purpose of conferment of such power of dismissal of election petition in limine is to ensure that the litigation which is meaningless and is bound to prove abortive should not be permitted to occupy the time of the Court and engage the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily, without point or purpose. The Apex Court has further gone on to express that even in ordinary civil litigation, the Court readily exercises the power to reject the plaint if it does not disclose any cause of action. Therefore, there was greater reason for taking the same view in regard. to matters pertaining to elections, in as much as, so long as the sword of Damocles of the election petition remains hanging, an elected member of the legislative assembly would not feel sufficiently free to devote his wholehearted attention to matters of public importance, as he would be required to. divert his attention to contest the election petition. He will have not only to win the vote of the people, but also to win the vote of the Court in a long drawn out litigation before he can wholeheartedly engage himself in discharging the trust reposed in him by the electorate'.

18. In the case of **SUBASH DESAI VS SHARAD J RAO - AIR 1994 SC 2277**, the Apex Court opined that Section 83 is not only procedural, but has an object behind it; so that a person declared to have been elected, is not dragged to court to defend and support the validity of his election, on allegations of corrupt practice which are not precise and details whereof have not been supported by a proper affidavit. Apart from that, unless the material facts and full particulars of the corrupt practice are set out in the election petition, the person whose election is challenged, is bound to be prejudiced in defending himself of the charges, which have been leveled against: him.

19. In the case of **RAM SUKH VS DINESH AGGARWAL -, (2009)10 SCC 541,** the Apex Court while emphasizmg strict compliance with statutory provisions in election petitions, has held that success of a winning candidate should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of law, At the same time, the Apex Court has expressed a note of caution that it is the duty of the Courts to zealously ensure that people do not get elected by flagrant breaches of the law or by indulging in corrupt practices. In the above mentioned case, the Apex Court referring to the judgment in **SAMANTH N.BALAKRISHNA VS GEORGE FERNANDEZ - 1969(3) SCC 238,** has ruled that Section 83 of the Act is mandatory and requires a concise statement of material facts and then the fullest possible particulars. Omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad. In the facts of the said case, the Apex Court found that where the election petition suffered from the vice of non-disclosure of material facts as stipulated in Section 83 of the Act, petition was liable to be rejected at the threshold on that ground.

20. In order to appreciate the contentions urged by the learned Counsel for the respondent, who has strongly asserted that the election petition completely lacks material facts regarding the allegations of corrupt practice and therefore, it fails the mandatory requirement mentioned in Section 83 of the Act, the Court has to first find out what constitutes material facts. All basic and primary facts which must be proved at the trial by a party to establish the existence of a cause of action or defence are material facts. Bare allegations are not treated as material facts. Material facts are such facts which afford a basis for the allegations made in the election petition. The meaning of 'material facts' bas been explained by the Apex Court in **VIRENDER NATH GAUTAM VS SATPAL SINGH - (2007) 3 SCC 617.** in paragraphs 34 & 35 of the said judgment, it is observed as under:

> "34. A distinction between 'material facts' and 'particulars', however, must not be overlooked. 'Material facts' are primary are basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. 'Particulars', on the other hand, are details in support of material facts pleaded by the party. They amplify refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. 'Particulars' thus ensure conduct of fair trial and would not take the opposite party by surprise.
>
> 35. All 'material facts' must. be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleadinq, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial."

21. In the case of **MOHAN RAWALE VS DAMODAR TATYABA ALIAS DADASAHEB & ANOTHER - (1994)2 SCC 392,** it is held that, distinction between "material facts" and "full particulars" is one of degree. The lines of distinction are not sharp. "Material facts" are those which a party relies upon and which, if he does not prove, he fails at the time. The purpose of "material particulars" is in the context of the need to give the opponent sufficient details of the charge set up against him and to give him a reasonable opportunity.

22. No rule of universal application can be applied in finding out whether statements of fact made in an election petition amount to material facts or not. It is necessary to consider the pleadings in each case. Therefore, it is necessary to now consider the pleadings.

23. The allegations of corrupt practice attributed to the respondent in the election petition are that, the respondent has got nexus with the underworld goondas and criminals and had been involved in many misappropriation cases. This allegation is made in paragraph 2. The said allegation is as bald as baldness could be. Material facts pertaining to this allegation are not pleaded, The expression nexus with the underworld goondas and criminals is so vague and general that it cannot be called an allegation containing material facts. Similarly, allegations of having nexus with Government officials and involvement in many cases of misappropriations are absolutely vague and bereft of any material facts.

24. In paragraph 3 of the petition, it is alleged that respondent had disrepute, whereas the petitioner enjoyed goodwill and faith among the people, which gave room for an apprehension to the respondent of his failure in the election. Therefore, by adopting mal practices, the respondent made baseless complaint against the petitioner and got the petitioner arrested under the Goonda Act, but the High Court quashed the rowdy list and ordered removal of the name of the petitioner from the list. The material facts with regard to the alleged complaint, the consequent arrest, are not forthcoming. The order of this Court in W.P. No. 6255/2012 dated 14.03.2013 refers to the entry of the name of the petitioner in the rowdy list during the year 1997 and its removal in 2006 and the subsequent re-inclusion of his name in the rowdy list on 10.10.2010 because two criminal cases had been filed against him in that year. Such re-inclusion in the

rowdy list only due to pendency of two cases against him was found fault with by this Court. Nothing is forthcoming in the allegations regarding the role of the complainant. There is no reference to the respondent in the order passed by this Court in the said writ petition. Therefore, these allegations are wholly unnecessary and vexatious. More over, these allegations do not pertain to any mal practice during the process of the present election. In **MOHAN RAWALE's** case referred to supra, the Apex Court has clearly held that allegations of corrupt practice relating to the period anterior to the date of candidate's nomination would not constitute allegations of corrupt practice and therefore must be excluded from consideration.

25. In paragraph 6, petitioner claimed that he had more than 15,000 followers, Seeing the said situation, respondent decided to indulge in mal practice in the election and distributed money in all booth areas which Magadi Police seized. These allegations are also bald and vague. The date, time and place and names of persons who allegedly helped the respondent in distributing the money are not mentioned. No material facts are furnished regarding the alleged seizure.

26. In paragraph 7, the allegations are that Gandhinagar Assembly Constituency has got 232 voting booths, wherein petitioner had stationed booth agents. After completion of voting, all the booth agents complained about defective electronic voting machines and told him that they had brought it to the attention of the officers incharge of the booth.

27. Petitioner further states in paragraph 8 of the petition that as the respondent confidently stated that he would win with a margin of 20,000 votes, he entertained suspicion about the free and fair election. Hence, petitioner enquired and came to know from 'reliable sources" that in collusion with manufacturers of electronic voting machines, contractors, election returning officers and maintenance people, respondent had installed, in all the EVMs, new software through which the votes cast in favour of the petitioner were diverted in favour of the respondent. These allegations do not contain any material facts about the nature of the defect complained of by the booth agents in the machines: the nature of complaint given to the returning officers: the date when such complaints were given. The so-called reliable source from where the respondent learnt about the collusion between manufacturers, contractor, returning officer, maintenance people and the respondent is not disclosed. A bald averment making sweeping allegations generally attributing 'insertion of new software' in all the 232 voting machines, admittedly based on information received from undisclosed sources, cannot be called as an allegation supported by material facts. Anybody can make such allegations against the voting machines and file a petition challenging the election. Such bald allegations cannot constitute material facts for the purpose of Section 33(a) of the Act, nor can they form basis for reasonable cause of action to file the election petition. These allegations are hopelessly bereft of particulars. They are not capable of being answered effectively. They cannot form basis of any cause of action to engage the respondent in the litigation calling upon him to defend such allegations. In **MOHAN RAWALE's case,** it is held that a reasonable cause of action is said to mean a cause of action with some chances of success when only allegations in the pleading are considered. The failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. In the case of **BRUCE VS ODHAMS PRESS LTD. - (1936) 1 ALL ER 287,** Scott LT said, "the word 'material' means necessary for the purpose of forming a complete cause of action, and if anyone 'material' statement is omitted, the statement of claim is bad."

28. In the case of **ANIL VASUDEV SALGAONKAR VS NARESH KUSHALI SHIGAONKAR - 2009(9) SCC 310,** the Apex Court in paragraph 64 of the judgment dealing with the expression 'material facts' has said that, material facts are facts upon which the plaintiffs cause of action or the defendants defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party. In paragraph 67, it is observed as under:

> "67. The legal position has been crystallized by a series of the judgments of this Court that all those facts which are essential to clothe the election petitioner with a complete cause of action are "material facts" which must be pleaded, and the failure to place even a single material fact amounts to disobedience of the mandate of Section 83(1)(a) of the Act."

29. Further allegations made in paragraph 8 in connection with the voting machines are that petitioner entertained doubt regarding the defect in the machine because several persons had voted in favour of petitioner as disclosed by them but their number did not tally with the number of votes cast through the electronic voting machines. The voting pattern being through secret ballot, such assertion cannot be made a foundation of a cause of action to file an election petition are it cannot be a basis for challenging the election. These averments are therefore wholly unnecessary being vexatious and irrelevant.

30. It is very essential to notice here that petitioner had contested the election to the legislative assembly from the very constituency during 2004 and 2008 polls. He had filed E.P.No.3/2004 and E.P.No.6/2008 challenging the election of the returned candidate in those two elections. As is evident from the orders passed by this Court vide Annexures-R1 & R2 in the two election petitions, the first of the election petition was dismissed as withdrawn and the second election petition was dismissed on merits.

31. It is also relevant to notice that the respondent who is declared elected has secured 54,968 valid votes polled, whereas petitioner has secured only 10,875 votes. Immediate rival of the petitioner belonging to BJP secured 32,361 votes. He has not chosen to challenge the election alleging any such manipulation or defect in the 232 voting machines installed in 232 booths of Gandhinagar Assembly Constituency. It is only the petitioner who has come up with such bald allegations attributing manipulation and defect in the electronic voting machines.

32. Thus, it is amply clear that material facts pertaining to the allegations of corrupt practice are not stated and bare and bald allegations as referred to above which are unnecessary, frivolous and vexatious do not disclose any reasonable cause of action to maintain the election petition.

33. Reliance is placed by the Counsel for the petitioner on the judgment in the case of **V.S.ACHUTHANANDAN VS P.J.FRANCIS & ANOTHER - AIR 1999 SC 2044,** to contend that lack of full particulars could not be made a basis for rejecting the election petition as the petitioner had the right to amend the pleadings. A perusal of the said judgment clearly discloses that in the facts of the said case, the election petition had been dismissed by the Trial Judge due to absence of details regarding the mal practice. In such circumstances, referring to the misconception of the legal position regarding the difference between material facts and material particulars, the Apex Court held that as long as there were material facts forming a reasonable cause of action with some chance of success and questions fit to be decided, mere absence of full particulars could not entail rejection of the election petition. Hence, this judgment does not in any manner help the petitioner.

34. Similarly, reliance is also placed on the judgment in the case of **PONNALA LAKSHMAIAH VS KOMMURI PRATAP REDDY & OTHERS - AIR 2012 SC 2638.** In the said case, the Apex Court has found that Courts have to be cautious in dealing with requests for dismissal of election petition at the threshold and exercise their powers or dismissal only in cases where even on plain reading of the pleadings, no cause of action is disclosed. In the said case, as observed in paragraph 12 of the judgment, the High Court had indeed held that material facts constituting the foundation of the case set up by the election petition had been stated in the election petition. That being so, the Apex Court found that the requirement of Section 83 of the Act requiring the petition to contain a concise statement of material facts had been satisfied, hence, question of dismissing the petition on that ground did not arise. In paragraph 22 of the said judgment, the Apex Court has clearly found that while it was important to respect a popular verdict and the courts ought to be slow in upsetting the same, it was equally important to maintain the purity of the election process. An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 & 103 of the Act cannot obviously be recognized and respected as a decision of majority of the electorate. The Courts are therefore duty bound to examine allegations whenever the' same are raised within the frame work of statute without being unduly hyper-technical in its approach and without being oblivious of ground realities'.

35. However, in the facts of the present case as adverted to in detail above, the bald allegation directed against the voting machines and alleged change of software in all the voting machines of 232 booths, the other allegations which are either vexatious or unnecessary do not refer to any material fact. As regards the voting machines, the allegations being general and casual, lacks material facts which are absolutely necessary to maintain an election petition.

36. I have kept in mind the concern expressed by the Apex Court and need to be alive to the present conditions in which the elections are held as spelt out by the Apex Court in **PONNALA LAKSHMAIAH's case** referred to supra, while examining the facts of this case. A bare, but careful perusal of the pleadings in the present election petition makes it clear that there is absolutely no cause of action and the one pleaded being devoid of factual details, the election petition is only designed to unnecessarily engage the valuable time of the court by dragging the winning candidate to the court.

37. It is also to be noticed here that as per Section 100 which deals with "Grounds for declaration of election as void" along with Section 123 which defines "Corrupt practices", defect in the electronic machines. or tampering of electronic voting machines are not listed as one of the grounds. Therefore, such bald allegations of manipulation of electronic voting machines cannot form basis for a reasonable cause of action.

38. For the aforesaid reasons, both the applications IA- 6/2013 and IA-7/2013 are allowed in terms stated above and the election petition is rejected with costs at the threshold for not disclosing material facts and for not making out any reasonable cause of action for the grievance made. Petitioner shall pay costs of Rs.10,000/- to the respondent within two weeks from today.

BY ORDER

TAPAS KUMAR

Principal Secretary

Election Commission of India.

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Section Officer

High Court of Karnataka

Bangalore.

ಪಿ.ಟಿ. ಕುಲಕರ್ಣಿ

ಜಂಟಿ ಮುಖ್ಯ ಚುನಾವಣಾಧಿಕಾರಿ ಹಾಗೂ

ಪದನಿಮಿತ್ತ ಸರ್ಕಾರದ ಜಂಟಿ ಕಾರ್ಯದರ್ಶಿ,

ಸಿಬ್ಬಂದಿ ಮತ್ತು ಆಡಳಿತ ಸುಧಾರಣಾ ಇಲಾಖೆ.

(ಚುನಾವಣೆಗಳು)

P.R. 113

SC - 50

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110001

NOTIFICATION

Dated 27th August, 2014, 5 Bhadrapada, 1936 (Saka)

No. 82/KT-LA/(2/2013)/2013- In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Order of the High Court of Karnataka dated 24th July, 2014 in Election Petition No. 2 of 2013.

BY ORDER
TAPAS KUMAR
Principal Secretary
Election Commission of India.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 24TH DAY OF JULY, 2014

BEFORE

THE HON'BLE MR. JUSTICE A.S. BOPANNA

E.P.No.2/2013

BETWEEN:

B.R. NEELAKANTAPPA
AGED ABOUT 69 YEARS
S/O BATTI RUDRAPPA
BETTADAHALLI,
TARIKERE TALUK
CHIKKAMAGALUR DIST-577 101 **. ... PETITIONER**

(BY SRI VINAYAKEERTHY M. ADV.)

AND:

1. G.H. SRINIVASA
AGED ABOUT 45 YEARS
S/O NANJUNDAPPA
#6176, GOWDA HANUMAIAH STREET
TARIKERE-577228
CHIKKAMAGALUR DISTRICT-577 101

2. D.S. SURESH
AGED ABOUT 45 YEARS
S/O D.C. SHANTAVEERANNA
DORANALU VILLAGE & POST
TARIKERE TQ.,
CHIKKAMAGALUR DIST.-577 101 **….RESPONDENTS**

(BY SRI H KANTHARAJ &
SMT. SARITHA M, ADV. FOR R1
SRI H B RUDRESH, ADV. FOR R2)

THIS ELECTION PETITION PRESENTED U/S 81 OF THE REPRESENTATION OF PEOPLE ACT, 1951 R/W RULE 4 OF THE ELECTION PROCEDURE RULES, KARNATAKA 1967 BY ONE SRI B R NEELAKANTAPPA, PETITIONER CANDIDATE CHALLENGING THE ELECTION OF THE RESPONDENT NOS.I & 2 TO THE KARNATAKA LEGISLATURE FROM NO.126, TARIKERE LEGISLATIVE ASSEMBLY CONSTITUENCY, GENERAL ELECTIONS HELD IN THE YEAR 2013 AND ETC.

I.A. No. 1/2013 IS FILED UNDER ORDER VII RULE 11(a) CPC READ WITH SECTION 151 OF CPC, 1908 BY RESPONDENT No.1 WITH A PRAYER TO REJECT THE ELECTION PETITION.

I.A. No. 4/2013 IS FILED UNDER ORDER VII RULE 11(a) CPC READ WITH SECTION 151 OF CPC, 1908 BY RESPONDENT No.1 WITH A PRAYER TO REJECT THE ELECTION PETITION.

I.A. No. 1/2014 IS FILED UNDER ORDER VI RULE 16 CPC READ WITH SECTION 151 OF CPC,. 1908, BY RESPONDENT No. 1 WITH A PRAYER TO REJECT THE ELECTION PETITION.

THE APPLICATIONS I.A.Nos.1/2013,4/2013 AND 1/2014 IN E.P. No. 2/2013 HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING;

ORDER

The petitioner who has secured 415 votes in the 126-Tarikere Legislative Assembly Constituency which consists of 1,59,863 electors of which 1,24,727 votes were polled is before this Court. He is assailing the declaration of the first respondent as the elected candidate on securing 35,817 votes in the result declared on 08.05.2013, on the ground that he has indulged in corrupt practice by using the photograph of the petitioner also in the pamphlets printed and distributed while soliciting votes for the first respondent. The acceptance of nomination of the second respondent who ultimately secured 34,918 votes in the same election is also assailed on the ground that particulars with regard to his bank details had not been disclosed. The respondents in addition to filing their objection statement have also filed the applications seeking that certain paragraphs of the petition be struck off and the petition be rejected in limine.

2. The first respondent has therefore filed I.A.No.1/2013 under Order- VII Rule 11(a) of the Civil Procedure Code ('CPC' for short) seeking rejection of plaint, while a similar application is filed by the second respondent also in I.A.No.4/2013. The first respondent has filed another application under Order VI Rule 16 CPC in I.A.No.1/2014 seeking to strike out paragraph Nos.10, 14, 15, 19, 21, 23 and 30 and consequently dismiss the petition. It is also contended that the petition is not maintainable for want of proper verification by way of appropriate affidavit required both under the provision of CPC and Section 83 of the Representation of the People Act, 1950 ('RP Act' for short). It is also contended that the material particulars are not forthcoming and the petition does not disclose the cause of action. The petitioner has filed his objection statement to the application contending that the particulars pleaded and the verifying affidavit filed is in order and that the applications are liable to be dismissed.

3. The learned Counsel for the first respondent in support of his contentions has relied on the following decisions;

(a) The case of **Azhar Hussain -vs- Rajiv Gandhi (1986 (Supp) SCC 315)** wherein it is held that the power under Order VI Rule 16 and Order VII Rule 11 CPC can be exercised as it is applicable to election petition by virtue of Section 87 of RP Act. The Court trying the election petition can exercise such power and summarily dismiss a petition which does not furnish material facts and particulars essential for disclosing the cause of action relating to corrupt practice.

(b) The case of **Anil Vasudev Salgaonkar –vs- Naresh Kushali Shigaonkar [(2009) 9 SCC 310)** wherein it is held that all material facts must be pleaded by the party in support of the case set up by him. The object and purpose is to enable the opposite party to know the case he has to meet and in the absence of the pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the election petition. It is held that all basic and primary facts which must be proved by a party to establish the existence of cause of action or defense are material facts.

(c) The case of **Smt. Patil Vaishali Ashok -vs-Digambarrao Yashwanthrao Patil & Ors. (AIR 2006 Kar 205)** wherein it is held that the election petition must contain a concise statement of material facts and must set forth full particulars of any corrupt practice relied on including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice.

(d) The case of **Dhartipakar Madan Lal Agrawal -vs- Rajiv Gandhi (AIR 1987 SC 1577)** wherein it is held that the paras of the election petition which do not disclose cause of action are liable to struck off under Order VI Rule 15. If it is found that the petition does not disclose cause of action and the trial would prejudice, embarrass and delay the proceedings, the Court can strike out pleadings even before the written statement is filed and reject the petition.

(e) The case of **V. Narayanaswamy -vs- C.P. Thirunavukkarasu (2000 (2) SCC 294)** wherein the earlier decision was relied to state that the election law being statutory in character must be strictly complied with, since an election petition is not guided by ever changing common law principles of justice and notions of equity. Being statutory in character it is essential that it must conform to the requirements of our election law. In that case the dismissal was upheld Since the affidavit did not meet the requirement of law and the petition did not disclose any cause of action or triable issue.

(f) The decision in the case of **Ram Singh & Others -vs- Col. Ram Singh (AIR 1986 SC 3)** wherein it is held that the corrupt practice must be committed by the candidate or his polling agent or by others with the implicit or explicit consent of the candidate or his polling agent. When allegation of fraud or corrupt practice .is made and when two views are possible, the one in favour of the elected candidate should be accepted and the election should not be declared void.

(g) The case of **Quamarul Islam -vs- S.K.Kanta & Others (AIR 1994 SC 1733)** wherein it is held that when the allegation of corrupt practice in the election are not specific, precise or clear and when both material facts and particulars have not been supplied

with sufficient clarity and when the affidavit filed in support of the election petition was not clear there would be no triable issues and the petition is liable to be dismissed.

(h) The case of **Jitu Patnaik -vs- Sanathan Mohakud & Others (2012(4) SCC 194)** wherein it is held that all basic and primary facts which must be proved at the trial by a party to establish existence of a cause of action or defense are material facts and afford a basis for allegations made .in the election petition. Bare allegations are never treated as material facts and whether the averments in an election petition constitute material facts or not would depend upon the facts of each case.

(i) The case of **Santhosh Yadav -vs- Narender Singh (2002 (1) SCC 160)** wherein it is held that all material facts must be set out in an election petition and must be substantiated by cogent evidence before the petitioner can succeed and the success of a winning candidate should not be lightly interfered with.

4. The learned counsel for the election petitioner on the other hand has relied on the following decisions:

(i) The case of **Virender Nath Gautam –vs- Satpal Singh & Others (AIR 2007 SC 581)** wherein it is held that material facts are facts upon which the plaintiff's cause of action or the defense of the defendant depends . What particulars could be said to be material facts would depend on the facts of each case and. no rule of universal application can be laid down. It is however absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defense are material facts and must be stated in the pleading by the party. The object and purpose is to enable the opposite party to know the case he has to meet. In the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact will entail dismissal of the suit or petition. Particulars on the other hand are details of the case which is in the nature of evidence a party would lead at the time of trial.

(ii) The case of **Nandiesha Reddy -vs- Kavitha Mahesh [(2011) 7 SCC 721)** wherein it is held that election petition shall contain a concise statement of the material facts on which the party pleading relies for the claim. In an election petition which does not contain material facts, no relief can be granted. All specific and primary facts which are required to be proved by a party for the relief claimed are material facts. It must. be pleaded, since the object and purpose is to enable the contesting party to know the case which it has to meet. An election petition can be summarily dismissed if it does not furnish the material: facts to give rise to a cause of action. What are material facts always depend upon the facts of each case and no rule of universal application is possible to be laid down.

(iii) The case of **Raj Narain -vs- Indira Nehru Gandhi & Another [(1972) 3 SCC 850)** wherein it is held that an election petition is not liable to be dismissed in limine because full particulars of corrupt practice alleged were not set out. If an objection was taken and the Tribunal is of the view that full particulars have not been set out, the petitioner is to be given an opportunity to amend or amplify the particulars. It is only in the event of non compliance with such order to supply the particulars, that the charge which remained vague could be struck down.

(iv) The case of **Ponnala Lakshmaiah –vs- Kommuri Pratap Reddy & Others (AIR 2012 SC 2638)** wherein it is held that though there is no denial of the fact that the Courts are competent to dismiss petitions if it does not disclose cause of action, it cannot be given a short shrift by taking an unduly technical view. While examining whether the plaint or an election petition discloses cause of action, the Court has to have full and comprehensive view of the pleading. The averments made cannot be read out of con text or in isolation. They must be taken in totality for a true and proper understanding of the case set up. Even after assuming the averments to be factually correct the Court finds no cause of action emerging from the averments, then it may be justified in rejecting the plaint. The defect in the verification and the affidavit is a curable defect. A petition that raises triable issues should not be dismissed simply because the affidavit filed by the petitioner is not in the given format which can be cured by the election petitioner by filing a proper affidavit.

(v) The case of **D.Ramachandran -vs- R. V. Janakiraman & Others [(1999) 3 SCC 267]** wherein a distinction between "full particulars" and "material facts" has been drawn and it has been held that the Court cannot dissect the pleadings into several parts and strike out portion which does not disclose cause of action.

(vi) The case of **G.M. Siddeshwar -vs- Prasanna Kumar ({2013} 4 SCC 776)** wherein the verification of the petition and the filing of the affidavit verifying the petition was considered both in the context of the provision contained Order VI Rule 15(4) of CPC and as contained in Section 83 of RP Act. The affidavit as provided under CPC is held to be a stand alone affidavit, hence the non-filing of which or the defect therein does not affect the petition. But the affidavit as required under Section 83 of RP Act should be filed with substantial compliance though non-compliance with Section 83 is a curable defect. However, if there is total and complete non compliance with the provisions of Section 83 of RP Act, then the petition cannot be described as an election petition and may be dismissed at the threshold. The summary dismissal of an election petition for non-compliance of Section 83, though not contemplated under Section 86 of RP Act, the rejection is approved since an election petition is to be tried as nearly as possible in accordance with the procedure applicable under CPC to the trial of suits and an election petition could also be dismissed, if it did not disclose a cause of action. The consequence of not curing the defect was also adverted to. The earlier decision was noticed wherein despite the written statement raising the defect it was not rectified and until the defect is rectified the petition could not have been tried and further when material particulars are not pleaded it could be rejected for non compliance of the mandatory provisions. However, on the facts of the case the affidavit by Prasanna Kumar was found to be in substantial compliance.

(vii) The case of **T.M. Jacob -vs- C. Poulose & Ors [(1999) 4 SCC 274)** wherein, while considering as. to whether the absence of the seal of the Notary or the name in the true copy supplied to the appellant therein could be construed as an omission, the

non-compliance of the provisions contained in Section 83 of the RP Act was considered and the doctrine of substantial compliance was held applicable in respect of the defects under Section 83, while the strict compliance entailing dismissal was held in respect of non compliance of the requirements of Sec. 81(3) of the RP Act.

(viii) The case of **Murarka Radhey Shyam Ram Kumar –vs- S. Roop Singh Rathore & Others (AIR 1964 SC 1545)** wherein it is held that a defect in verification in the matter of election petition is an issue which comes within clause (c) of sub-sec.(l) of Sec.83 and the defect can be removed in accordance with the principles of the Code of Civil Procedure .

5. From the cumulative perusal of the decisions cited by either side, the legal position enunciated is clear. The position of law is that even in an election petition filed under the RP Act, the Court is entitled to exercise the power under CPC in order to examine the petition so as to find out whether the petition complies with the provisions of the RP Act and discloses the cause action to proceed further. In the event of the petition being defective and not making out the cause of action the Court would be entitled to dismiss the petition at the threshold, in limine even though the same is not provided for in Section 86 of RP Act. In an appropriate case and in the relevant circumstance, the Court can also. exercise the power to strike out pleadings as provided under Order VI Rule 16 of CPC. To One to a conclusion as to whether the petition discloses the cause of action, the petition alone should be looked into. While thus considering the petition averments, it should not be read out of context nor should the pleadings be dissected. It must be read as a whole and while doing so, a distinction between, 'full particulars', 'material particulars' and 'material facts' should be borne in mind. Material facts are those facts which constitute cause of action and it means entire bundle of facts in concise form. However, the paragraphs of the petition which do not disclose cause of action, embarrass and delay- the trial can be struck off. What are material facts always depend upon the facts of each case and no rule of universal application is possible nor can it be put in a straight jacket. Full and comprehensive view of the pleading along with its tenor and terms is to be taken as a whole. When allegation of corrupt practice in the election petition is not specific, precise or clear and when both material facts and particulars have not been supplied with sufficient clarity and when the affidavit filed in support of the election petition was not clear, there would be no triable issue. Bare allegations are never treated as material facts. Hence, in that light if the election petition is examined and if no cause of action is made out, the Court would be justified in rejecting the petition at the threshold. In the backdrop of the legal position, it is necessary to refer to and examine the averments made in the instant petition.

6. On the contention with regard to the petition not being verified as contemplated under Section 83 of RP Act and Order VI Rule 15 (4) of CPC, the position of law enunciated by the decisions noticed above is that in respect of an election petition, the affidavit filed in addition to the verification made in the petition as required under Order VI Rule 15(4) CPC is not a mandatory requirement. As such an affidavit as required under CPC is, a stand alone document and any defect in such affidavit does not become fatal to the petition. However, the affidavit as required under Section 83 of RP Act in Form No. 25 should be filed with substantial compliance and defects if any is curable. But if such affidavit is with total and complete non-compliance, then the petition cannot be described as an election petition and can be dismissed at the threshold. That is so, since the petition cannot be tried until the defect is rectified .

7. In the light of the above, the contention in the instant case is to be noticed to come to a conclusion as to whether the petition herein is rendered defective for want of compliance relating to the appropriate affidavit. In addition to the verification made to the petition, a verifying affidavit in terms of' the requirement under Order VI Rule 15(4) CPC is filed in the instant case. Apart from the defect pointed out in the manner in which the paragraphs 1 to 34 is mentioned in a composite fashion as against the same being split in the verification with regard to averments on personal knowledge and averments based on information, the date of the affidavit being prior to the date of the petition is also pointed out to contend that it is defective. Despite such contention, the same need not be adverted to in detail insofar as the affidavit filed in compliance of the requirement under CPC, since in any event, as held by the Hon'ble Supreme Court the affidavit as contemplated under CPC is not an absolute requirement and therefore the said defects are of no consequence.

8. The issue however is with regard to the affidavit filed in Form No.25. In the instant case, the petitioner has instituted the election petition alleging that the first respondent has committed corrupt practice as defined under Section 123(4) of RP Act Therefore, in view of the requirement enunciated in the proviso to Section 83(1) of RP Act an affidavit in Form No.25 is to be filed. The petitioner has no doubt filed such affidavit but the issue is as to whether the same satisfies the requirement. At the outset, it is seen that it is not in the same format of Form No.25 as there is no affirmation with regard to averments made as per the knowledge of the petitioner and those averments made based on information. The initial of the first respondent is not correctly mentioned. Even in that light, if it is held to be in substantial compliance and if the defects are treated as curable defects, the vehement contention of the learned Counsel for the respondents is about the date mentioned and the affidavit being sworn before Notary on 07.06.2013, while the petition and the verification thereto is dated 10.06.2013. This in my opinion will have to be looked at as a total non-compliance with the provision of Section 83 of RP Act. The allegation of committing corrupt practice is a serious allegation and it is in that view, it is to. be verified by an affidavit since the proviso to Section 83 of RP Act requires that the petition is to be accompanied by an affidavit in the prescribed form where the petitioner alleges any corrupt practice. Hence, the averments made in the petition is required to be verified on solemn affirrnation.

9. If that be the position, the petitioner as a deponent to such affidavit will necessarily have to be aware of the contents in the specific paragraphs in the petition and swear to the correctness of the same either based on his personal knowledge or if based on information, the source of such information etc. In such situation, the date contained in the election petition and the date in the affidavit will assume significance. The petition and the affidavit will have to be contemporaneous or in the least the swearing of the affidavit should be subsequent to the date of the petition so as to verify and affirm the averments in the petition. The petition which is subsequent to the date of the affidavit is no petition in the eye of law as the averments relating to corrupt practice are not verified and affirmed by an

affidavit as required by law. Despite the said contention being raised by the respondents, the petitioner did not seek to rectify the same but sought to justify the petition as being In compliance and as such permitting an opportunity to rectify the same at this stage also does not arise. The benefit of the decision relied on in that .regard and noticed supra will enure to the petitioner only insofar as the affidavit filed as provided under the CPC as it is held that it is not a requirement and not to the affidavit required under the provisions of the RP Act. Such unverified petition without an appropriate affidavit is therefore liable to be rejected as there is total non-compliance of the requirement and the petition cannot be construed as a valid petition.

10. The next question for consideration is as to whether the petition is liable to be rejected on the ground that the averments do not make out cause of action. To consider this aspect; it is to be noticed that the corrupt practice as alleged by the petitioner in this petition is as provided in Section 123(4) of the RP Act, wherein the corrupt practice stated is as follows;

> "(4) The publication. by a candidate or his agent or by any other person with the consent of a candidate or' his election agent, of any statement of fact which i.e; false, and which he either believes to be false or does not believe to be true, in relation .to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election. "

11. In that light, the bare perusal of the case as put forth by the petitioner will disclose that there is no material produced to contend that an explicit false statement has been made by the first respondent or his agent in relation to the candidature or withdrawal of the petitioner's candidature. The contention however is that the pamphlets printed for propaganda by the first respondent contains the photograph of the petitioner in the second line (third photograph among other photographs) and it is not in the nature of an appeal made by the petitioner with his solo photograph. The allegation however is that this has been done to depict as if the petitioner his also supporting the first respondent who was the Congress party candidate, despite the first respondent being aware that the petitioner had resigned from the Congress party and was contesting, against the first respondent as an independent candidate.

12. When the allegation of corrupt practice is outlined in such fashion and there is no statement to that effect in the pamphlet but is based only on one of the photographs being that of the petitioner among the photographs of the galaxy of Congress leaders, the onus is heavy on the petitioner to plead the facts relating to the same to indicate that not only the first respondent or his agent had approved the printing of the pamphlets, but it will also have to be pleaded that they had approved the inclusion of the petitioner's photograph and all this had designedly been done. to project that the petitioner who had a clout and would garner substantial votes had withdrawn from the contest and is supporting the first respondent. To find out as to whether the petitioner has made this effort so as to indicate that the material facts has been pleaded, it would be necessary to not only refer to the averments as contained in the petition but also to take note as to whether the factual position has been pleaded since the learned counsel for the first respondent has contended that the averments are contrary to the factual position depicted in the document based on which the pleading has been raised.

13. As noticed, the fact that the petitioner's photograph is seen as the third photograph in the second row along with the photographs of several other leaders of the Congress party as seen in Annexure-4 is evident, but it is not so conspicuous. The perusal of the same indicates that the names of the persons who have published the same has been printed in the pamphlet, which does not include the name of the first respondent or that of his agent who has made the payment for the same. In an attempt to attribute knowledge to the first respondent, the petitioner in paragraph-14 of the petition has averred that the list of nominations had already been finalized and the petitioner's name was at Sl.No.12 and despite the same the first respondent, in the meeting of the Congress Committee conducted on 22.04.2013 gave consent for publication of the pamphlets. As rightly pointed out by the learned counsel for the first respondent, as per the case of the petitioner he has resigned from the Congress party and in such circumstance when the petitioner alleges that in the meeting of the Congress party held on 22.04.2013, the first respondent has approved the same so as to attribute knowledge to the first respondent, the material facts relating to the basis for such assumption of the petitioner and as to whether such approval of the pamphlet was one of the subjects in the meeting and if so, was it approved by the first respondent despite being aware that the petitioner's photograph would also be printed should have been averred with at least the basic details so that the first respondent could meet such contention and same could have gone to trial as a triable issue. But, except for the allegation, the material facts are not pleaded.

14. The further details constituting material facts as indicated is necessary, when this is also examined in the light of the averments made in paragraph-19 wherein the petitioner has referred to the complaint made by him and the reply issued by the first respondent to the Model Code of Conduct Officer (MCC) wherein the first respondent has stated that the photograph was printed without his knowledge. To controvert the same, the petitioner has once again referred to the Congress committee meeting dated 22.04.2013 and alleged that the first respondent has given specific consent but such averment is without material facts to substantiate such averment.

15. Though the petitioner. has stated with regard ' to the expenditure incurred for printing being accounted to the first respondent's election account, the further averments in paragraph-23 which relates to that aspect is not a true reflection of the factual contents in the letter dated 30.04.2013 addressed by the proprietor of Venupriya printers who had printed the pamphlets in question. The letter at Annexure-14 indicates that the printer has stated that the Municipality members had requested for printing the pamphlets but the receipt has been issued in the name of Sri. T.M.Raju, the election agent of the first respondent as it relates to the election expenditure. But it has been represented by the petitioner in paragraph-23 of the petition as if the bill and the pamphlets were handed over to the election agent of the first respondent so as to attribute knowledge to the agent and such misrepresentation of fact contrary to

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the document is liable to be struck off and if that be so, there would be no pleading to attribute knowledge to the agent of the first respondent But, even without striking off, if the misrepresentation is noticed and if in that background the averment. in paragraph-24 is perused in its correct perspective as found in the letter, the knowledge attributed to the first respondent based to the earlier averments would appear bald and without material facts, let alone the material particulars for proving such allegations. Further, in paragraph-15 also there is no specific details of such misrepresentation being made with the knowledge and consent of the first respondent or his agent.

16. That apart, the averment in paragraph-21 though is attributing the conduct of inclusion of the petitioner's photograph to garner the votes of the persons belonging to the Lingayat community, in effect it exposes the petitioner of banking on a particular community for his success in the election and appealing for votes in that manner which in itself is a corrupt practice. Be that as it may, the said averment, except making a bald allegation and projecting the petitioner as a leader of the Lingayat community does not disclose any material particulars as to whether there were .no other candidate who belonged to that community even if the petitioner was projected as. if he was not in the fray and his community votes was solicited by the petitioner on that basis. If there were other candidates of that community, then the basis for the petitioner to assume that the entire population of that community would have voted. for him but for the objectionable pamphlets depicting his photograph is also without any material facts being pleaded relating to the voting pattern when the petitioner is a person who has secured only 415 votes. Though the learned counsel for the petitioner contends that the contentions put forth by the learned counsel for the respondents are only defense available to the respondent to be considered ultimately, this Court has already noticed the law enunciated that the bare perusal of the pleading itself without reference to the defense will have to on its own strength make out a triable case and depict the cause of action and it is in that light the case as put forth is noticed.

17. In that View, even if the petition is not dissected and even the paragraphs as sought by the first respondent to be deleted is not deleted, but if the petition as it exists at present is lead as a whole, it does not disclose the material facts to indicate cause of action for a petition in the nature of the allegations made towards corrupt practice stated in Section 123(4) of the RP Act. I am of the said opinion for the reason that even if the pamphlet indicating the photograph of the petitioner is in existence and the averment to that extent is accepted to be factually correct, except for referring to the sequence of events that have taken place, there is no material facts pleaded relating to misrepresentation about the petitioner supporting the first respondent nor is there material to show that the photograph is printed with the knowledge and consent of the first respondent or his agent and the distribution of such pamphlets having resulted in the alteration of the voting pattern. Since the averments are bald and without even the basic material facts or particulars, the same does not raise triable issues so as to devote the public time of this Court based on such allegation and pleading and the election of the first respondent cannot be treated lightly. In fact the petition does not raise any triable issue even without striking out any portion of the pleading as sought by the first respondent. When no cause of action is forthcoming relating to corrupt practice alleged against the first respondent who is the elected candidate, the allegation against the second respondent also would not arise in the nature of the pleading made in that regard when the basis for the petition is of corrupt practice.

18. For all the aforestated reasons, the following:

ORDER

(i) I.A.Nos. 1/2013 and 4/2013, both filed under Order VII Rule 11 (a) of CPC are allowed.

(ii) Consequently, E.P.No.2/2013 stands rejected.

(iii) I.A.No.1/2014 filed under Order VI Rule 16 of CPC is disposed of as unnecessary in the circumstances.

(iv) The parties. to bear their own costs,

Sd/-
JUDGE
BY ORDER
TAPAS KUMAR
Principal Secretary
Election Commission of India.
....
Section Officer
High Court of Karnataka
Bangalore.

ಪಿ.ಟಿ. ಕುಲಕರ್ಣಿ
ಜಂಟಿ ಮುಖ್ಯ ಚುನಾವಣಾಧಿಕಾರಿ ಹಾಗೂ
ಪದನಿಮಿತ್ತ ಸರ್ಕಾರದ ಜಂಟಿ ಕಾರ್ಯದರ್ಶಿ,
ಸಿಬ್ಬಂದಿ ಮತ್ತು ಆಡಳಿತ ಸುಧಾರಣಾ ಇಲಾಖೆ.
(ಚುನಾವಣೆಗಳು)

P.R. 114

SC - 50

ಮುದ್ರಕರು ಹಾಗೂ ಪ್ರಕಾಶಕರು:– ಸಂಕಲನಾಧಿಕಾರಿಗಳು, ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ, ಸರ್ಕಾರಿ ಕೇಂದ್ರ ಮುದ್ರಣಾಲಯ, ಬೆಂಗಳೂರು–59